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March 21, 2013

Notice of Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On March 19, 2013, John Murdock, President, and Greg Rogers, Deputy General Counsel, Bandwidth.com, Inc.; Michael Shortley, III, Vice President, Legal, Michael Mooney, General Counsel, Regulatory Policy, and Andrea Pierantozzi, Vice President, Voice Services; and the undersigned ("CLEC Participants") met with Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel. In the meeting, the CLEC Participants reiterated their significant concerns regarding the series of voice over Internet protocol ("VoIP") provider ("Petitioners") petitions seeking limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources.

The CLEC Participants emphasized their opposition to a waiver, and expressed their view that if the Commission acts it should do so through an Notice of Proposed Rulemaking ("NPRM"). Granting direct access to numbering resource to non-carrier providers is inherently related to ongoing discussions in other dockets, including IP interconnection. The Commission should therefore ensure that it proceeds cautiously by first conducting an NPRM on this issue to ensure that there are no unintended consequences of granting non-carrier providers direct access to numbering resources. Any decisions in this critical area should be determined through open-minded, balanced, and thorough consideration in an NPRM.

If the Commission decides to grant a waiver to Vonage to conduct a trial, it still must ensure that the due process of a rulemaking is not defeated by the trial itself. To ensure that this

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is the case, the Commission should conduct the trial, if any, in advance of initiating an NPRM. If the Commission runs the trial concurrent with the NRPM, it will undermine the integrity of the NPRM and give Vonage inside information that is not available to other parties.

Moreover, given the novel legal and factual issues associated with any non-carrier waiver, it is not appropriate for the Commission to rely on delegated authority with respect to any non-carrier's waiver request. The duly limited trial, if any, should be limited to the participation of Vonage only. Given that the Commission has not established a standard by which it will determine whether a provider is capable of gaining direct access to number resources, each waiver request presents novel legal and factual issues that should only be entertained upon the consideration of the full Commission. In the end, the more responsible and sensible course is to conduct the NPRM, determine whether it is advisable for non-carriers to obtain direct access to number resources, and then establish a minimum standard of competency by which all providers will be judged before entering the market. This is a role currently reserved to the state commissions before granting carriers status as local exchange carriers. Changing this well-established legal precedent through *ad hoc*, non-standards-based waivers for non-carriers without conducting a rulemaking proceeding could not withstand legal scrutiny.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey
James C. Falvey
Counsel for CLEC Participants

cc: Commissioner Rosenworcel
Priscilla Delgado Argeris